

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1028

Short Title: Subcontractor Claims Against Owners.

(Public)

Sponsors: Senator Miller.

Referred to: Judiciary.

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW A CONTRACTOR, ON BEHALF OF A SUBCONTRACTOR,
2 TO FILE AN ACTION AGAINST THE OWNER REGARDING A CLAIM
3 ARISING OUT OF THE CONTRACT BETWEEN THE SUBCONTRACTOR AND
4 THE CONTRACTOR FOR THE SAME PROJECT THAT IS THE SUBJECT OF
5 THE CONTRACT BETWEEN THE CONTRACTOR AND THE OWNER.
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7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 22C-2 reads as rewritten:

9 "**§ 22C-2. Performance by ~~subcontractor.~~ subcontractor; actions by contractor on**
10 **behalf of subcontractor.**

11 (a) Performance by a subcontractor in accordance with the provisions of its
12 contract shall entitle it to payment from the party with whom it contracts. Payment by
13 the owner to a contractor is not a condition precedent for payment to a subcontractor and
14 payment by a contractor to a subcontractor is not a condition precedent for payment to
15 any other subcontractor, and an agreement to the contrary is unenforceable.

16 (b) A contractor may, on behalf of a subcontractor of any tier under the contractor,
17 file an action against an owner regarding a claim arising out of or relating to labor,
18 materials, or services furnished by the subcontractor to the contractor pursuant to a
19 contract between the subcontractor and the contractor for the same project that is the
20 subject of the contract between the contractor and the owner.

1 (c) In any action filed by a contractor against an owner under subsection (b) of this
2 section, it shall not be a defense that the costs and damages at issue were incurred by a
3 subcontractor and that subcontractor has not been paid for these costs and damages. The
4 owner shall not be required to pay the contractor for the costs and damages incurred by a
5 subcontractor, unless the subcontractor submits proof to the court that the contractor has
6 paid these costs and damages to the subcontractor."

7 Section 2. This act becomes effective October 1, 1997, and applies to contracts
8 entered on or after that date.